Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
Market Entry and Regulation of Foreign-Affiliated Entities	)	IB Docket No. 95-22 RM-8355 RM-8392

COMMENTS OF TELEGLOBE INC.

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SUMMARY

Teleglobe respectfully submits that the addition of the proposed effective market access test to the Commission's public interest standard for reviewing foreign carrier applications to enter the U.S. market would hinder rather than further the achievement of the Commission's goals. The proposal would not promote global competition, encourage foreign governments to open their markets, or streamline the Commission's own processes so as to remove uncertainty from investment decisions. Rather, the proposed standard would increase administrative delay and uncertainty and inevitably would be interpreted by foreign carriers and governments as a "closing" of the U.S. market. With a global consensus clearly emerging in favor of competition and allowing foreign entry into telecom markets, now is not the time for the Commission to take market-closing measures that could slow or reverse these positive trends.

Application of the proposed effective market access test necessarily would require detailed case-by-case review of the status of regulation and competition in the "primary markets" of every foreign carrier seeking entry. Moreover, the test would be added to all of the existing criteria under the Commission's public interest standard. This change almost certainly would further lengthen the Section 214 process and exacerbate the "uncertainty" that the Commission acknowledges foreign carriers already face in seeking entry into the U.S. market.

The proposed test is not needed to prevent anticompetitive conduct by foreign carriers. The Commission's

current public interest standard, which focuses on market power abroad, protects against the risk of discrimination by a foreign carrier against unaffiliated U.S. carriers in its home market.

Under the Commission's proposals, foreign carriers could be denied access to the U.S. market unless the governments in their primary markets have already or "will soon" open their markets to competition and implemented a U.S.-style regulatory framework. Teleglobe notes that the U.S. did not liberalize any of its own international services and facilities markets in a single stroke, and has not yet completed the process. Given the diversity of regulatory frameworks around the world and the complexity of transitioning to a competitive model, the Commission should not impose arbitrary deadlines as a condition for participation in the "most vital market for shaping world competition."

Should the Commission decide to adopt a market entry policy based on the principle of equivalent market access, Teleglobe recommends that:

- The Commission adopt a standard based on the existence of "mutually advantageous market opportunities" for U.S. companies in the telecommunications sector of an applicant's primary market. Such an approach would be less rigid than the Commission's proposed approach and would give consideration to market conditions in the foreign country's telecom sector as a whole, rather than narrow indicators of access in foreign telecom market segments;
- The Commission base the affiliation standard it plans to adopt, for purposes of applying the market access policy on the reciprocal principle. Specifically, the Commission should review foreign investment in a U.S. carrier only to the extent

that the administration of the carrier's primary market reviews such investments by U.S. entities;

- Regardless of whether the Commission acts on the proposals in the Notice, it should establish and publish a timetable by which it will process all new and pending Section 214 international facilities applications.

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In the Matter of Market Entry and Regulation of Foreign-Affiliated Entities	)	IB Docket No. 95-22 RM-8355 RM-8392

COMMENTS OF TELEGLOBE INC.

Teleglobe Inc. ("Teleglobe"), by its attorneys, hereby files its Comments in the above-referenced proceeding, in which the Commission is proposing to modify the public interest standard it uses to evaluate foreign carrier applications under Section 214 of the Communications Act of 1934 for authority to provide international facilities-based services in the United States. Specifically, the Commission proposes to add a requirement that a foreign carrier seeking to enter the U.S. market demonstrate that "effective market access is, or will soon be, available to U.S. carriers seeking to provide basic, international telecommunications facilities-based services in the primary markets served by the carrier desiring entry."[1]

The Commission also asks whether this proposed "effective market access" test should be triggered when a foreign

[1] Market Entry and Regulation of Foreign-affiliated Entities, Notice of Proposed Rulemaking ("NPRM" or "Notice"), released Feb. 17, 1995, at para. 2.

carrier owns more than 10 percent, more than 25 percent, or some other level of the capital stock of a Section 214 applicant. In addition, the Commission asks whether the test should be incorporated as an element of the public interest standard applied under Section 310(b)(4) of the Act to applications of foreign entities seeking to acquire an indirect ownership interest of more than 25 percent in U.S. radio licensees.

I. Introduction

Teleglobe is a holding company whose principal business activities are conducted through several international telecommunications services subsidiaries. Teleglobe Canada Inc. (TCI) provides wholesale overseas telecommunications services to Canadian retail carriers. The Teleglobe International Group of companies, including Teleglobe International Inc., its affiliate Teleglobe International (U.S.) Inc., and other subsidiaries seek to invest in, establish, and operate international telecommunications systems and provide consulting and international turnkey telecommunications projects in the United States and elsewhere.

Teleglobe's interest in this proceeding is three-fold. First, as a participant in what the Commission correctly characterizes as the "increasingly global" telecommunications services market,[2] Teleglobe is directly affected by regulatory developments, at both the national and multilateral levels, that could facilitate or hinder the development of such a global

[2] NPRM at para. 20.

marketplace. Second, given the extensive inter-relationships between Canada and the United States generally, and in telecommunications markets in particular (76 percent of Canada's international traffic is with the U.S.), the importance of developments in the North American marketplace and regulatory environment is magnified for Canadian carriers. As the corporate parent of a Canadian carrier, Teleglobe hopes that it can offer the Commission a beneficial perspective on the potential consequences of the Commission's proposed rules for efforts to promote global telecommunications competition and the development of a Global Information Infrastructure. Third, Teleglobe offers its views as a potential investor and competitor in the U.S. telecommunications market.

In the Notice, the Commission identifies three goals underlying its regulation of the U.S. international telecommunications market: "(1) to promote effective competition in the global market for communications services; (2) to prevent anticompetitive conduct in the provision of international services or facilities; and (3) to encourage foreign governments to open their communications markets."[3/] Teleglobe strongly supports these objectives. However, and despite the Commission's stated intentions to the contrary, Teleglobe believes that the addition of the proposed "effective market access" test to the Commission's Section 214 public interest standard would hinder rather than further the achievement of the Commission's goals.

[3/] NPRM at para. 1.

As discussed in greater detail below, the proposed standard, if adopted, would be likely to retard, rather than promote, the development of a competitive global telecommunications marketplace. The Commission is proposing to apply the effective market access test in addition to all of the existing criteria under the Commission's public interest standard. While the Commission characterizes the proposed test as a "uniform standard,"[4/] in practice, application of the test necessarily would require detailed case-by-case review of the status of regulation and competition in the "primary markets" of every foreign carrier seeking entry. This process would exacerbate the "uncertainty" that the Commission acknowledges already exists under its current, more limited case-by-case review process.[5/] By requiring the Commission to consider and balance multiple additional layers of factors, the proposed public interest standard likely would further extend the already lengthy international Section 214 application and review process. Thus, the proposed standard would be unlikely to yield administrative efficiencies, add any degree of certainty, or reduce burdens on the Commission's resources.[6/]

After more than a decade of leading world telecommunications markets to greater openness -- boldly and quite successfully -- by example, the Commission now proposes to

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4/ NPRM at para. 32.

5/ NPRM at para. 23.

6/ NPRM at para. 32.

abandon its leadership as insufficiently productive and adopt the approach of reciprocal tightening of markets. Foreign carriers and governments logically and inevitably would interpret the imposition of such a test as an additional barrier to entry and as an effective "closing" of the U.S. market. Such a step away from the United States' historic leadership role in telecommunications liberalization and in promoting open markets could reverberate negatively around the world. As many countries look to the United States as a model for reforming their regulatory structures, they could decide to follow the Commission's example and take similar market-closing steps. Such a dynamic would stall the current steady progress toward open markets and delay the benefits of global competition. With a global consensus emerging in favor of competition and allowing foreign entry into telecom markets, now is not the time for the Commission to erect new entry restrictions.

The proposed effective market access standard is not needed to prevent anticompetitive conduct in the provision of international services or facilities. While it is entirely appropriate for the Commission to ensure that foreign carriers do not discriminate against unaffiliated entities in a manner that could translate into a preferential position in the U.S. market, the current application of the public interest standard under which the Commission reviews foreign carriers' Section 214 international facilities applications addresses this concern fully. The current standard focuses specifically on the potential for a foreign carrier to discriminate unduly against unaffiliated U.S. carriers in its home market. The Commission already has devised and, where appropriate, imposed effective safeguards to prevent such anticompetitive conduct. Nowhere in the Notice does the Commission explain why it now finds these successful policies inadequate.

Furthermore, adoption of the proposed effective market access standard would not be likely to encourage foreign governments to open their communications markets. The imposition by the United States of additional criteria restricting foreign carriers' entry into the U.S. international facilities-based market could have the opposite effect. Given the probable consequences of the Commission's proposed approach, it does not appear to be in the interests of U.S. consumers.

The Commission notes that telecommunications markets are becoming increasingly global, and that many carriers are forming alliances and taking other steps necessary to remain viable participants in this changing environment. The Commission also states that the "United States has become the most vital market for shaping world competition."[7/] Given that "over 20 percent of all international communications services involve the United States" and over 40 percent of the world's multinational corporations are headquartered in the United States,[8/] it is clear that access to the U.S. market is becoming an essential

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7/ NPRM at para. 20.

8/ Ibid.

prerequisite for foreign carriers' successful participation in the emerging global communications market.

Yet, under the proposed effective market access test, foreign carriers could be denied access to the "most vital market for shaping world competition" unless the governments in their "primary markets" have already or "soon will" do what the United States itself took more than a decade to do. The Commission does not specify how "soon" such reforms would have to be made in order to qualify under the proposed standard. AT&T has proposed that the Commission look prospectively at reforms over a two-year period. In the Notice, the Commission implies that it may consider an even shorter horizon. As discussed above, requiring as a condition for allowing foreign carriers to participate in the U.S. market that all barriers to entry into the foreign carrier's domestic market be removed within two or fewer years is an onerous standard that few countries can reasonably be expected to meet. As the U.S. experience in introducing competition into its domestic markets illustrates, very complex issues arise in transitioning to a competitive telecommunications marketplace.

The United States did not liberalize its own international (or even domestic) services and facilities market on anything like a flash-cut basis. The transition to an open and competitive international facilities-based services market in the United States has been lengthy, and indeed it is as yet incomplete. For instance, statutory restrictions continue to limit foreign ownership of radio licenses.

Like the United States, many other countries are at various stages in the transition toward liberalized telecommunications markets. As the Commission itself acknowledges, "(m)any" countries have lifted restrictions on entry into their markets by foreign-based carriers.[9] These trends have been inspired in no small part by the successes of the U.S. model. Indeed, following the U.S. model, very few countries have completed the transition on a flash-cut basis. Rather, the process has extended over a number of years.

Canada is a case in point. Having observed the benefits of competition in its neighbor's telecommunications market, Canada now has opened most market segments to competition, in some cases doing it in advance of the United States. Moreover, the Canadian government is planning soon to initiate a review of its regulations and adopt a framework for future regulation of international services, in a proceeding fully as transparent as those conducted by the Commission. The U.S. Government and U.S. carriers will have a full opportunity to participate in that proceeding and make recommendations regarding the transition to further competition in the international services market.

U.S. carriers have been the principal beneficiaries of the global liberalization trend, emerging as dominant partners in global alliances and entering and investing in foreign markets far more extensively than foreign carriers have entered the U.S.

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[9] NPRM at para. 21.

market. U.S. entities have acquired majority and minority interests in a large number of telecommunications service providers around the globe. U.S. participation in many countries' telecom markets far exceeds foreign carriers' participation in the U.S. market. The largest U.S. carriers totally dominate the U.S. market, and given the size of these carriers, they are unlikely ever to be displaced by foreign entrants. Furthermore, U.S. companies are the largest exporters of capital into the telecommunications sector around the world. In contrast, the U.S. telecommunications sector has experienced only limited foreign entry, reflecting, in substantial part, current legal restrictions on foreign investment in radio licenses and the Commission's difficulty in acting expeditiously on applications involving foreign investment.

Given these investment patterns and the well-established trend toward liberalization and competition, Teleglobe submits that the proposed approach to regulating access to the U.S. international facilities-based market is neither necessary nor appropriate. In light of the Commission's finding that foreign carrier entry into the U.S. market benefits U.S. consumers,[10] the imposition of new tests that would restrict, or at the very least slow, such entry, do not appear to be in the U.S. public interest.

As discussed in greater detail below, Teleglobe is concerned that the Commission's proposals overlook the diversity

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[10] NPRM at para. 32.

of regulatory frameworks in foreign countries, and the legitimate bases for these differences. The proposed effective market access test appears to require other countries to mimic in large measure the current U.S. regulatory structure for international facilities-based services as a condition for allowing carriers from those countries to enter the U.S. market. While the Commission proposes to apply the test "flexibly," Teleglobe is concerned that the new public interest standard, as proposed, nonetheless could be so rigid that even carriers from countries that are in the forefront of the liberalization and global competition trends would be denied entry into the U.S. market. In particular, Teleglobe is concerned that legitimate differences in the Canadian and U.S. regulatory frameworks could result in Canadian carriers being denied entry, despite the fact that Canada's telecommunications market is, in practice as well as theory, one of the most open markets in the world.

Teleglobe submits that the addition of the proposed effective market access test to the Section 214 public interest standard would set back rather than advance the Commission's goals. Teleglobe suggests that the Commission's current policies for examining Section 214 international facilities applications are the appropriate ones for determining market entry, although they should be modified to ensure timely action on such applications.[11/] The Commission should retain its current

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[11/] The manner in which the Commission's existing market entry policies are applied, and the manner in which they can be abused and manipulated by opposing interests, may (continued...)

approach, with its focus on preventing undue discrimination by the foreign carrier against unaffiliated U.S. carriers, rather than adopt the more rigid and cumbersome approach proposed in the Notice. By applying the existing public interest standard in a more timely manner, the Commission would substantially reduce the "uncertainty" clouding foreign investment, which it correctly identifies as a problem. Teleglobe urges the Commission to establish and publish a timetable for reaching a final decision on new and pending Section 214 international facilities and service applications.

Should the Commission decide, despite the concerns raised in these comments, to adopt a market entry standard that includes consideration of U.S. carriers' access to the home or "primary" markets of foreign-affiliated applicants, Teleglobe recommends that the Commission adopt a less rigid approach than proposed in the Notice. Specifically, in recognition of the diversity and dynamism of regulatory structures around the world, Teleglobe urges the Commission to consider a standard based on the existence of "mutually advantageous market opportunities" for U.S. companies in the telecommunications sector of countries which are considered to be an applicant's primary markets. Such an approach would allow the Commission to focus on market conditions in the telecom sector as a whole, rather than narrow indicators of access in foreign telecom market. Indeed, the

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[11/] (...continued)
necessitate administrative improvements. Nonetheless, the current policy framework is sound and should be reaffirmed.

Commission has not enunciated any clear basis for such a narrow focus.

II. The Commission's Proposed Approach Does Not Take Adequate Account of Legitimate Differences in National Regulatory Structures

This proceeding stems from a Petition for Rulemaking filed by AT&T in 1993, asking the Commission to apply a "comparable market access" standard in evaluating foreign carrier applications for authority to enter the U.S. services market. AT&T also urged the Commission to impose extensive and detailed safeguards on foreign entrants, the ostensible purpose being to prevent a foreign carrier from taking advantage of any market power it may have in its home market. The barely varnished purpose of AT&T's petition was to seek the erection of new barriers to competitive entry into the U.S. international telecom market, which is clearly the least competitive sector of the U.S. interexchange services market and the one with the most existing barriers to entry. These requested additional barriers would help to preserve AT&T's dominant position in the market and prolong its ability to leverage its considerable market power. Along with the bulk of parties filing comments on the matter, Teleglobe opposed AT&T's petition.[12] Teleglobe noted that AT&T's approach would deny U.S. consumers the benefits of additional international facilities-based services competition,

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[12] Reply comments of Teleglobe Inc., RM-8355, November 16, 1993.

including lower prices and innovation in the provision of services.

In the Notice, the Commission concludes that AT&T's proposed market entry standard "would require that the regulations and market structure of the foreign country mimic those of the United States."[13] The Commission also observed that AT&T's suggested standard would be "impossible" to meet.[14] Teleglobe agrees with these conclusions. Unfortunately, the "effective market access" standard proposed in the Notice suffers from many of the same shortcomings as AT&T's proposals.

In evaluating a foreign carrier's Section 214 international facilities application, the Commission proposes, first, to "assess whether the primary market, or markets, of the carrier offers effective opportunities to U.S. carriers to compete in the provision of basic, international services and facilities."[15] The Commission would examine six factors to determine whether effective market access exists. Having applied the effective market access test, the Commission then would consider all of the other public interest factors under which it currently evaluates foreign carrier applications to enter the U.S. market.

The Commission states that its effective market access test would not determine alone whether a foreign carrier would be

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[13] NPRM at para. 41.

[14] Ibid.

[15] NPRM at para. 43.

allowed entry into the U.S. market. Rather, "all of the public interest factors surrounding entry" would be balanced.[16] Thus, the Commission states that even if effective market access does not exist in a foreign carrier's primary markets, the carrier "may still show" that "other public interest factors warrant its entry into the U.S. market."[17] Conversely, a foreign carrier could also be denied entry even if it "passes" the effective market access test. The Commission provides a specific example of circumstances in which "the balance of public interest factors may weigh against granting entry to a carrier" even "if comparable market access exists for international facilities-based services in a particular country."[18]

The Commission states that its proposal to "maintain flexibility"[19] by balancing effective market access and other public interest factors distinguishes its approach from AT&T's "strict" comparable market access standard. However, as the example cited by the Commission itself indicates, the approach proposed in the Notice may, in application, be even stricter.

According to the Commission, the approach proposed in the Notice, in contrast to AT&T's, does not require "mirror reciprocity."[20] While less mechanistic than AT&T's approach,

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[16] NPRM at para. 49.

[17] Ibid.

[18] NPRM at para. 41.

[19] Ibid.

[20] NPRM at para. 49.

the Commission's determination of whether effective market access exists would be based on analysis of highly specific and detailed aspects of other countries' regulatory structures. These include (1) the procedures followed by the national regulatory body, (2) the existence of cost allocation rules, (3) the manner in which technical information about interconnection of carrier facilities is disclosed, and (4) the treatment of carrier and customer proprietary information.[21/] While the Commission states that no one factor in the effective market access test would be dispositive, the combined factors clearly contemplate a regulatory structure in the foreign country that largely mimics the U.S. regulatory regime.

The Commission itself acknowledges the existence of "varying market and regulatory conditions around the world."[22/] Yet the approach proposed in the Notice does not appear to take sufficient account of the legitimate bases for these differences in regulatory framework and market structure. Because of the vital nature of telecommunications, individual countries have adopted unique approaches to regulation. One size does not fit all. Furthermore, existing regulatory structures in most areas of the world are undergoing rapid change, almost universally in the direction of liberalization and competition. As the Commission acknowledges, "many" countries "permit various forms

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21/ NPRM at para. 40.

22/ NPRM at para. 41.

of entry into their markets."[23] Regardless of such progress and the opportunities it has created for U.S. carriers abroad, the effective market access standard, if adopted, could result in a foreign carrier being denied entry into the U.S. market unless its primary market has adopted, or "will soon" adopt, a U.S.-style regulatory structure governing international facilities-based services.

A. Within Canada's Unique Regulatory Framework, U.S. Carriers Participate Extensively in Canadian Telecom Markets

With its unique telecommunications industry structure and regulatory framework, the Canadian market is, in both practice and theory, among the most open in the world to foreign carriers. Canada's liberalization has been positively influenced by the U.S. experience, which has demonstrated the benefits that can flow from competition; Canada's liberalization is also driven by demand from Canadian telecommunications users for the same opportunities available to U.S. customers. Indeed, in some market segments, Canada has introduced competition in advance of the United States.[24]

Moreover, there is extensive foreign participation in the Canadian telecommunications market, particularly by U.S.

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[23] Ibid at para. 21.

[24] In July, 1994, the Canadian Radio-television and Telecommunications Commission adopted a policy allowing competitive entry into local telephone service markets on a nationwide basis. Regulatory Framework Decision, No. 92-12.

carriers in the long distance services market, which has been open to competition since June 1992:

- AT&T holds a 20% equity interest in Unitel Communications, Inc., the largest facilities-based competitive long distance service provider in Canada. The President and Chief Executive Officer of Unitel is a former AT&T executive from the United States, as are several other senior Unitel executives.

- The Stentor alliance of Canadian regional telephone companies and MCI Corporation have a strategic alliance to develop products jointly and work together on international expansion. Under an agreement signed in 1992, the Stentor companies paid MCI $150 million to use MCI's software in their networks.

- Sprint Corp. owns 25% of Sprint-Canada (formerly Call-Net), a facilities-based and resale telecommunications service provider and the third largest long distance service provider in Canada. Sprint-Canada's services are provided under the Sprint brand name.

- BCTel, the second largest telephone company in Canada, and Québec Téléphone, an independent telco, are majority owned by the Anglo-Canadian Telephone Company, a wholly owned subsidiary of GTE Corporation of the U.S.[25/]

In contrast, the Canadian presence in the U.S. telecommunications services market is extremely limited. fONOROLA, a Canadian-owned reseller, is licensed to resell international private line services between the U.S. and Canada; it currently is the only Canadian company operating as a common carrier in the United States. The Commission has granted a submarine cable landing license for a cable owned 50 percent

[25/] GTE's right to retain indirect majority ownership and control of BCTel and Québec Téléphone has been "grandfathered" for many years in Canadian law.

directly and 10 percent indirectly by Teleglobe. In sum, U.S. carriers hold a significant and growing share of the Canadian telecommunications market, while Canadian carriers' penetration of the U.S. market is negligible, and could never seriously threaten the dominance of domestically owned carriers.

The regulatory framework in Canada, as in other countries including the U.S., reflects the economic, social, political and geographic factors affecting the telecommunications market. The structure of the Canadian telecommunications industry differs markedly from that of the United States, where the domestic long-distance carriers also provide international facilities-based services. Unlike the situation in the United States, Canadian telecommunications have evolved as a segmented marketplace. In Canada, domestic and Canada-U.S. long-distance services are provided by the Stentor companies, independent telephone companies (not associated with Stentor), new entrants, such as Unitel Communications Inc. and Sprint-Canada, and by many resellers, such as ACC and fONOROLA.

In the area of international services, Canada-United States traffic accounted for 67.4 percent of all outgoing international MTS traffic from Canada and 83.2 percent of all incoming international MTS traffic in 1993. The Canada-U.S. route has been open to competition since 1992. Additionally, international simple resale (i.e., private line voice services interconnected to the public switched network at both ends) has been allowed in Canada since 1991, if also permitted at the foreign end. Canada-U.S. international services are provided by the Stentor companies, independents, Unitel, Sprint Canada, and resellers.

For the minority (less than 25 percent) of Canada's international traffic that is overseas, TCI is the designated carrier. TCI provides these services on a wholesale "carrier's carrier" basis to Canadian retail service providers (*i.e.*, facilities-based carriers and resellers). TCI does not provide Canada-U.S. services. There are no legal or regulatory restrictions pertaining to ownership on foreign carriers or their affiliates providing intercontinental resale services so long as they do not also operate as facilities-based carriers in Canada. Thus, for overseas traffic, Canada adopted a similar approach to that followed by the U.S. historically for intercontinental satellite traffic.

Furthermore, the Canadian regulatory process governing international facilities-based services is transparent and open to participation by U.S. interests. Teleglobe notes that the Canadian government intends to initiate a proceeding in the near future to consider possible revisions to the regulatory framework for international services. The United States government and U.S. carriers will have a full opportunity, along with other interested parties, to comment and make recommendations for completing the transition to a fully competitive Canadian international telecom market. That proceeding could result in further reforms to the regulations governing international services in Canada.

Teleglobe is concerned that the Commission's proposed market entry test, if adopted, would not be flexible enough to accommodate the evolving Canadian regulatory framework. Under the proposed test, the Commission would consider whether effective market access exists or will exist in the "near future" for U.S. carriers in the primary markets of the carrier seeking entry. This time frame may be too short to reflect any changes adopted in the upcoming Canadian international regulatory review. Teleglobe is concerned that the rigidity of the proposed test could result in a finding that effective market access is not available in the Canadian international facilities-based services market, despite the progressive liberalization of the Canadian market as a whole.

III. The Revised Market Entry Standard Would Increase Rather Than Reduce Market Uncertainty and Administrative Burdens Facing International Facilities Applicants and the Commission

The Commission states that the "case-by-case review of foreign carrier applications" required under its current market entry policies "has caused uncertainty in the market due to the lack of a clear standard for evaluating applications by foreign carriers with different degrees of market power in their home markets."[26] According to the Commission, this proceeding will "help the Commission to articulate standards to provide more coherent principles" for evaluating such applications and will

[26] NPRM at para. 23.